

REMARKS

Claims 54-85 are currently pending in the subject application and are presently under consideration. Claims 54, 55, 57, 58, 60-64, 67, 69, 71, 73, 75, and 81 have been amended as shown on pages 2-7 of the Reply. Claims 59, 72, and 80 have been cancelled. Claims 86-102 have been withdrawn.

Applicants' representative thanks Examiner Sax for the courtesies extended during the telephonic interview conducted on February 24, 2009. The participants discussed possible amendments to overcome the rejections under 35 U.S.C §112 regarding collection of passive feedback using facial expression input. The claim amendments herein incorporate ideas proposed during the interview for overcoming this rejection, including suggestions offered by the Examiner. The amended claim features were also discussed in view of the currently cited references, and the Examiner indicated that he would perform an additional search on these features upon receipt of the Reply.

Favorable reconsideration of the subject patent application is respectfully requested in view of the comments and amendments herein.

I. Rejection of Claims 54-68, 70-85 Under 35 U.S.C §112

Claims 54-68, 70-85 stand rejected under 35 U.S.C §112, second paragraph, as allegedly being incomplete for omitting essential steps. Independent claims 54 and 71 have been amended herein to disclose additional features regarding passive feedback monitoring. It is therefore respectfully requested that this rejection be withdrawn.

II. Rejection of Claim 69 Under 35 U.S.C §112

Claim 69 stands rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 69 has been amended herein to correct its parent claim reference, thereby addressing the antecedent basis issue raised in the Office Action.

III. Rejection of Claim 69 Under 35 U.S.C. §103(a)

Claim 69 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Jain, *et al.* (6567980) and Morris (2002/0088000). It is respectfully submitted that this rejection should be

withdrawn for at least the following reasons. Jain, *et al.* and Morris, individually or in combination, do not teach or suggest all aspects set forth in the subject claims.

A factfinder should be aware, of course, of the distortion caused by hindsight bias and must be cautious of arguments reliant upon *ex post* reasoning. See *KSR v. Teleflex*, 550 U.S. ___, 127 S. Ct. 1727 (2007) citing *Graham v. John Deere Co. of Kansas City*, 383 U. S. 1, 36 (warning against a “temptation to read into the prior art the teachings of the invention in issue” and instructing courts to ““guard against slipping into the use of hindsight”” (*quoting Monroe Auto Equipment Co. v. Heckethorn Mfg. & Supply Co.*, 332 F. 2d 406, 412 (CA6 1964))).

The subject claims relate to authoring and intelligent presentation of media clips. Media clips (e.g. pictures, audiovisual clips, *etc.*) can be stored together with metadata produced for each clip, the metadata describing features of the clip such as, but not limited to, a mood or theme conveyed by the clip, a person or object identified in the clip, or a date for the clip. The metadata for the stored clips can be analyzed to identify clips having a relationship, and a playlist of such related clips can be generated for presentation to a user. In particular, amended independent claim 54 recites, *a metadata analyzer that analyzes the annotating metadata of the retrieved scene together with annotating metadata of at least one other scene in the media store in order to identify a relationship; [and] a playlist generator that evaluates the relationship and produces a playlist of related scenes retrieved from the media store based on the relationship.*

Jain, *et al.* does not disclose such a technique for creating a playlist of media scenes. Jain, *et al.* relates to a video cataloguing system that extracts metadata from a video stream and indexes the video using the extracted metadata. The result of this process is an HTML output containing intelligently selected browsable keyframes from the video, displayed with metadata tracks for close-caption text, audio classes, speech, keywords, and speakers corresponding with each keyframe. However, the cited reference does not teach or suggest *identifying relationships between scenes* based on an analysis of metadata associated with each scene, or *building a playlist of related scenes* based on these relationships. Rather, Jain, *et al.* is primarily concerned with indexing a video stream together with extracted metadata and hyperlinks to facilitate manual perusal of the indexed video, but does not contemplate identifying relationships between

scenes within the video, much less selecting scenes having such a relationship for inclusion in a playlist.

Morris is also silent regarding these aspects. Morris relates to a method for controlling access to metadata associated with an image by assigning user roles to each metadata element, such that the metadata can only be accessed by users having an approved role. However, Morris makes no mention of creating a playlist of images or scenes, or selecting scenes for such a playlist based on an analysis of metadata associated with the respective scenes, as described above.

The subject claims also disclose that user feedback can be passively monitored during playback of the playlist of scenes. This can include monitoring the viewer's emotional reactions, mood, or facial expressions as the scenes of the playlist are displayed. Based on the user's passive feedback for a given scene, the playlist can be updated by adding or removing similar scenes in accordance with the user's monitored reactions. In particular, amended independent claim 54 goes on to recite, *a viewer that displays the playlist of related scenes; a feedback receiver that monitors passive feedback in response to the playlist displayed by the viewer, the passive feedback comprises at least a user's emotional reaction as inferred by monitoring the user's facial expression using an image capture device and recognizing the user's emotional reaction via the monitored facial expressions; and a playlist updater that updates the playlist based at least in part on the passive feedback.* Contrary to assertions made in the Office Action, Jain, *et al.* does not teach or suggest monitoring a user's emotional reaction in connection with viewing a playlist of scenes. Arguing that Jain, *et al.* discloses these monitoring aspects, the Office Action indicates passages relating to extraction of keyframes, timecodes, and textual and audio metadata from a video stream. However, these steps do not relate to playback of a playlist to a user, but rather to construction of an index for the video stream. Moreover, with regard to user feedback, the indicated passages of Jain, *et al.* disclose only that a user can define annotations for a video clip by marking in- and out-points for the clip. This in no way suggests monitoring a viewer's emotional reaction, as determined by capturing a user's facial expressions, during playback of a video. It therefore cannot be said that the cited reference discloses updating such playlist of related scenes in accordance with feedback provided by such monitoring. Morris also fails to teach or suggest updating a playlist based on the above-mentioned passive feedback.

Similarly, amended independent claim 71 recites, *analyzing the metadata associated with the scene in view of metadata associated with at least one other scene in the media store; identifying at least one relationship between a subset of scenes in the media store based on the analysis; generating a playlist comprising the subset of scenes based on the identified relationship... recording passive feedback from the user as the playlist is presented, the passive feedback comprising at least an inferred emotional reaction by the user as recognized by reading the user's facial expressions using an image capture device; and updating the playlist based at least on the passive feedback.* Neither Jain, *et al.* nor Morris teach or suggest these features, as discussed *supra*.

With further regard to determining a relationship between scenes, amended claim 64 recites, *the metadata analyzer computes a similarity value for the relationship between respective scenes*, while claim 65 recites, *the playlist generator produces the playlist of related scenes based at least in part on the similarity value*. As already noted, neither Jain, *et al.* nor Morris discloses building a playlist of scenes based on a determined relationship between the scenes. More specifically, the cited references do not contemplate *computing a similarity value representing a relationship between scenes*.

Claim 77 discloses additional information regarding this similarity score, reciting, *the act of evaluating a relationship further comprises computing a similarity score for the relationship based upon the metadata that comprises information concerning at least one of a present face, a present item, a present voice, a present mood, or a present theme*. As discussed above, neither cited reference teaches or suggest such a similarity score representing a relationship between scenes. The cited references therefore also fail to disclose that such a similarity score can be based on the presence of a particular face, item, voice, mood, or theme within the respective scenes.

In view of at least the foregoing, it is respectfully submitted that Jain, *et al.* and Morris, individually or in combination, do not teach or suggest all features of amended independent claims 54 and 71 (and all claims depending there from), and as such fail to make obvious the present invention. It is therefore requested that this rejection be withdrawn.

CONCLUSION

The present application is believed to be in condition for allowance in view of the above comments and amendments. A prompt action to such end is earnestly solicited.

In the event any fees are due in connection with this document, the Commissioner is authorized to charge those fees to Deposit Account No. 50-1063 [MSFTP304US].

Should the Examiner believe a telephone interview would be helpful to expedite favorable prosecution, the Examiner is invited to contact applicants' undersigned representative at the telephone number below.

Respectfully submitted,
AMIN, TUROCY & CALVIN, LLP

/Himanshu S. Amin/
Himanshu S. Amin
Reg. No. 40,894

AMIN, TUROCY & CALVIN, LLP
127 Public Square
57th Floor, Key Tower
Cleveland, Ohio 44114
Telephone (216) 696-8730
Facsimile (216) 696-8731